



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/951,832 10/16/97 LINA

C 06-2916.312

WAYNE J. COLTON, INC.  
THE MILAM BUILDING SUITE 1108  
115 EAST TRAVIS STREET  
SAN ANTONIO TX 78205

QM12/0928

EXAMINER

RUHL, D

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

09/28/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

08/951,832

Applicant(s)

Lina et al.

Examiner

Dennis Ruhl

Group Art Unit

3761



☒ Responsive to communication(s) filed on Sep 15, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 13 is/are allowed.

☒ Claim(s) 1-12, 14, and 15 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. The request filed on 9-15-99 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/951832 is acceptable and a CPA has been established. An action on the CPA follows. The amendment of 8-27-99 has been entered as requested by applicant.
2. Claims 2-8, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 2, if claim 1 recites the filter as being interpose the canister and pump then how can it be in the canister in claim 2? Claim 2 contradicts claim 1.

With respect to claim 5, there is no antecedent basis for "the interior".

With respect to claim 8, this claim presents a combination subcombination problem. Applicant has claimed the combination of a pad and canister in claim 1. No dressing has been claimed in claim 1. Is the dressing part of the combination? If the dressing is part of the combination then it must be claimed in claim 1, not just in claim 8. If it is not part of the combination then this is an improper claim because it is not clear if the dressing is being claimed with the combination. The scope of this claim is unclear. Correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who

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has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claims 1,3-6,9-12, are rejected under 35 U.S.C. 102(e) as being anticipated by Elson et al. (5466229).

With respect to claims 1,9,10, Elson discloses a pad 24, tube 22, canister 12 and pump 14. The pump, tube, pad, and canister are all in fluid communication with each other. The filter is 138. See column 10, lines 10-24. The fluid level sensor is 38. Elson discloses the sensor as being electrical which is what a capacitance sensor is. The pad is capable (is adapted) of being positioned as claimed.

With respect to claim 3, as best understood by the examiner (because of claim 2) the housing is 20.

With respect to claim 4, the canister is removably retained in a recess as claimed.

With respect to claim 5, see column 13, lines 33-42.

With respect to claim 6, Elson incorporates by reference patent no. 4747166 with respect to the material for the pad (column 13) . Because of this Elson discloses a polymer foam with interconnecting cells (the expanded cellulose microcellular material with an open cell construction). Cellulose is a polymer.

With respect to claim 11, Elson is capable of the claimed limitation. The device can be turned off and on for intermittent operation and can be left on for continuous operation.

With respect to claim 12, the bleed device is 26. It is capable of releasing pressure as claimed.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elson in view of Todd et al. (5437651).

Elson discloses the invention substantially as claimed. Elson does not disclose polyether foam with 95% interconnecting cells although Elson does disclose the use of a foam material. Todd discloses a fluid collection system that uses a pad 12 that is made from polyurethane foam. The examiner considers polyether foam and polyurethane foam to be the same thing. They are equivalents. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the foam of Todd in the system of Elson so that fluid can be readily collected by the void space in the foam.

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7. Claims 14,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (4,460,361) in view of Holbrook (3,804,090). Nichols discloses the invention substantially as claimed. Nichols discloses a plastic container 14, inlet 40, outlet 18. See column 3, lines 36-42 for the disclosure of the bacterial filter. The examiner considers the deflector to be the portion of 40 that is protruding into the interior of container 14. Nichols does not disclose the container as having an anti-foaming substance in the container. Holbrook discloses a device that allows the addition of a foam reducing substance into a vacuum fluid collection system. Holbrook discloses that when collecting blood and other body fluids, the fluids may form a foam that will prevent accurate reading of the amount of collected fluid as well as possibly contaminating the vacuum pump with the foam. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Nichols with an anti-foaming substance as disclosed by Holbrook to help reduce the foaming of collected fluids so that accurate readings of the amount of fluid collected can be done, as well as preventing possible vacuum pump contamination.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols in view of Holbrook as applied to claim 14 above and further in view of Bryant et al. (5,234,419). Nichols discloses the invention substantially as claimed. Nichols does not disclose the container as having a gel forming substance that immobilizes collected fluid. Bryant discloses a suction system that has a waste treating material added into the container that includes a germicide and an absorbent powder. It would have been obvious to one of ordinary skill in the art at the time the invention

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was made to provide the container of Nichols with a waste treating material as disclosed by Bryant so that the collected fluids can be treated with a germicidal agent as well as a powder absorbent to help immobilize collected fluids.


8. Claim 13 is allowed.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kuntz (4747166), Gross (5549854), and Lawrence et al. (5678564) disclose a collection system that has an absorbent pad.

9. Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant's arguments filed 9-15-99 with respect to claims 14,15, have been fully considered but they are not persuasive. Applicant has not presented any specifics as to why the claims are patentable. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262.



Dennis Ruhl

Patent Examiner

September 23, 1999